

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/222/13 -RA

Date of Issue: 10/08/2018

ORDER NO. 246 /2018-CX (WZ)/ASRA/MUMBAI DATED 03.07.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Garg Tex-O-Feb Pvt. Ltd.

Respondent : Deputy Commissioner(Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
US/836/RGD/2012 dated 22.11.2012 passed by the
Commissioner (Appeals), Central Excise, Mumbai -II.



ORDER

This revision application is filed by the M/s Garg Tex-O-Feb Pvt. Ltd. (hereinafter referred to as "the applicant") Surat, against the Order-in-Appeal US/836/RGD/2012 dated 22.11.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai -II.

2. The issue in brief is that the applicant had filed 3 rebate claims totally amounting to Rs. 1,49,263/- (Rupees One Lakh Forty Nine Thousand Two Hundred Sixty Three only) under Rule 18 of Central Excise Rules, 2002. Deputy Commissioner, Central Excise (Rebate) Raigad, vide Order in Original No.2661/11-12/DC(Rebate), Raigad dated 31.03.2012 rejected these rebate claims on the ground that the exported goods were fully exempted under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1A) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the applicants could not have paid duty and did not have the option to pay the duty. The adjudicating authority further observed that since the name of the processor M/s Agarwal Textile Mills was appearing in the alert list, the applicant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty, which they failed to submit. It was further observed by the adjudicating authority that the Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying in respect of two claims and the Container No. and Seal No. do not appear on the Bill of Lading and thus the conditions for grant of rebate under Notification No.19/2004-CE (NT) were not fulfilled.

3. Being aggrieved, the applicant filed appeal before the Commissioner (Appeals), Central Excise, Mumbai -II who vide the impugned Order-in-Appeal US/836/RGD/2012 dated 22.11.2012 upheld the Order-in-original 2661/11-12/DC(Rebate)/Raigad dated 31.03.2012 on certain grounds and allowed the



appeal on certain grounds and in finality dismissed the appeal filed by the applicant without giving any benefit to the applicant.

4. Aggrieved by the Order in Appeal, the applicant have filed the Revision Application before the Central Government mainly on the following grounds :

4.1 The action taken by the Hon. Commissioner (Appeals), Central Excise, Mumbai - II, dismissing the appeal of the Applicants, without going into merits, facts of the case. No findings also offered on the case laws relied on by the Applicants and he has accepted some of the grounds of the Applicants and on whole he upheld the Order in Original. Therefore, the Order in Appeal should be set aside for the following reasons and explanations.

4.2 There are three rebate claims, Out of that, two rebate claims No. 13863 dated 19.09.2007 and No. 13864 dated 19.09.2007 were cleared for export from processor Mts. Agarwal Textile Mills. Against these two rebate claims Deputy Commissioner has given reasons in findings for rejection of rebate claim stating that No grey purchase duty payment particulars produced inspite of submitting the duty payment certificate by the Applicants at the time of filing the rebate claims. In respect of both these rebate claims duty payment certificate has been called from the jurisdictional Range Superintendent directly by the Deputy Commissioner (Rebate). This fact is nowhere mentioned in the OIO. However, the third rebate claim No. 16176 dated 22.10.2007 is cleared from the Applicant's own unit and the Applicants have submitted all the proof of duty payment on the grey fabrics credit availed, there is no findings against this rebate claim and the same was also rejected by the adjudicating authority and appellate authority without giving any findings and there is no order for rejection of this third claim. Actually this rebate claim should have been sanctioned as there is neither rejection of



rebate claim either in the OIO and OIA nor in in the findings of both the Orders i.e. Order in Original and Order in Appeal.

- 4.3 The OIO refers the investigation of DGCEI but it does not say the name of M/s. Agarwal Textile Mills in the evaders list. The DGCEI has investigated number of units and issued a list of tainted units, however, the name of M/s. Agarwal Textile Mills is not in the said list. Once the name is not there it should not be presumed that duty on grey fabrics has not been paid.
- 4.4 In the deficiency memo letter all the three dates of P.H. were given. No separate three P.H. letters for three different dates of hearing was not given. All the three dates were shown in one letter only by the Adjudicating authority. This letter was not received by the Applicants hence they could not appear before the Adjudicating authority. This is the violation of principles of natural justice.
- 4.5 Whole findings of the OIO is based on presumption and assumption without giving any corroborative evidence which is also upheld by Commissioner (Appeals). By this way rejection of genuine rebate claim is nothing but harassment.
- 4.6 If the adjudicating authority had any doubt he should have called for the report, however, in this case report has already called for and also received by the Deputy Commissioner (Rebate) from the jurisdictional Officers instead of presuming that duty has not been paid. Now the practice in the Maritime Commissioner's office that they directly call for the duty payment certificate from the concerned range or division and the duty payment certificates are not handed over the exporter/manufacturer in the sealed cover as used to be earlier. In this case also it has been called for and received by the Deputy Commissioner (Rebate). Therefore, the jurisdictional officers are not giving the duty payment certificate to the exporters directly. By this way the exporters are



harassed in both ways. The Applicants have also submitted the duty payment certificate in the sealed cover at the time of filing the rebate claim.

- 4.7 In para 18 (a) of OIO the adjudicating authority rejected only two rebate claim Nos. 13863 and 13864 only. It seems he has sanctioned the third rebate claim No.16176 cleared from the Applicant's unit even though order part says rejected all three rebate claims.
- 4.8 In para 14 of the OIO in the last line the adjudicating authority has referred as - "It appeared that the invoices issued by the suppliers were not genuine duty paid invoices." This conclusion he has arrived as if without making any investigation and without calling for the duty payment certificate from the jurisdictional officers as is being done. This is a wrong finding. But in this case duty payment certificate is received.
- 4.9 The Applicants state and submit that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. This is only a reimbursement and not any kind of incentive. The Applicants have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim only on technical grounds as is done by the adjudicating authority in the present case, is nothing but harassment to the genuine exporter and discouraging export.



- 4.10 The Applicants submit below the reply to the only allegation raised by the learned Commissioner (Appeals) while upholding the Order in original:-

That the genuineness of duty payment by the supplier of grey fabrics and duty paid from the cenvat availed by the processor M/s. Agarwal Textile Mills on the goods exported by the Applicant is not paid by the supplier of grey fabrics and they are fictitious. In this Connection Applicants state and submit that there are in all three rebate claims are involved in this Order in Appeal, Out of that in respect of two rebate claims- No. 13863 dated 19.09.2007 and No. 13864 dated 19.09.2007 were cleared for export from processor M/s. Agarwal Textile Mills. Department has called for Duty Payment Certificate from the jurisdictional Range Supdt., Range I, Division-II, Surat-1 directly by the Maritime Commissioner. This Certificate is issued in 2007 and the DGCEI investigation was carried out in 2004 and 2005. The Certificates issued after that are issued only after verifying the grey fabrics duty paid confirmation from the jurisdiction of grey fabrics manufacturers. In this certificate also the Supdt. has clearly mentioned that the grey fabrics duty paid has been verified. The reference of this certificate is no were mentioned in the OIO and OIA. This is nothing but suppression of information for rejecting the genuine rebate claim.

In respect of the third Rebate claim No. 16176 dated 22.10.2007 is cleared from the Applicant's own unit and the Applicants have submitted all the proof of duty payment on the grey fabrics credit availed. There is no findings against this rebate claim at all and also not sanctioned the rebate claim instead rejected along with other two claims without giving any findings for rejection under the presumption that this is also cleared from M/s. Agarwal Textiles Mills by the adjudicating authority as well as Commissioner (Appeals) inspite of the specific mention before the Commissioner (Appeals), the said claim was also rejected by the adjudicating authority and appellate authority. Actually this rebate claim should have been sanctioned by the adjudicating authority as there is neither rejection of rebate claim either in the OIO or OIA nor in the findings of both the Orders i.e. Order in Original and Order in Appeal.

- 4.11 The Applicants further submit that:



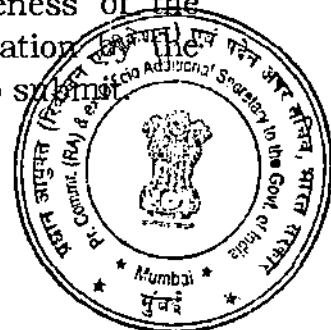
(a) The BRC was submitted along with the Rebate claims. However the BRC is not the document required to be filed along with the rebate claim as per Notification No. 19/2004 - CE (NT) dated 6.9.2004. Applicants have received the full remittance for all these three exports and are enclosing the BRC for all the three exports in dispute.

5. A personal hearing in the case was held on 03.02.2018. Shri R.V. Shetty, Advocate appeared on behalf of the Applicant. The Applicant pleaded for settling aside the Order-in-Appeal and allowing Revision Application in view of the submission made in RA and synopsis filed at the time of hearing.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant had filed 3 Rebate claims totally amounting to Rs. 1,49,263/- under Rule 18 of Central Excise Rules, 2002. The said Rebate claims were rejected by the Adjudicating Authority on the grounds that:

- (i) the exported goods were fully exempted under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1A) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the applicant could not have paid duty and did not have the option to pay the duty,
- (ii) the Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying in respect of two claims and the Container No. and Seal No. do not appear on the Bill of Lading and thus the conditions for grant of rebate under Notification No.19/2004-CE (NT) were not fulfilled.
- (iii) since the name of the processor M/s Agarwal Textile Mills is appearing in the alert list, the applicant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization by the processors for payment of duty, which they failed to submit.



8. Government further observes that Commissioner (Appeals) in his impugned Order has decided first two issues 7(i) and 7(ii) above, as under :

"The proviso to Notification No.30/2004-CE makes it abundantly clear that the exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat Credit Rules, 2004. The ARE-1s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat credit under the provisions of Cenvat Credit Rules, 2004. Therefore, it is clear that they could not have been possible exempt under Notification No.30/2004-CE. Accordingly this ground for rejection of rebate claim cannot be sustained and has to be set aside".

In respect of rejection of the claim on the ground that there was difference in Chapter Heading Number of the Central Excise Tariff declared in the excise invoice of the exported goods and in the corresponding shipping bills, it is found that the proforma of the Shipping Bills prescribed by the CBEC does not have a column for Central Excise Tariff classification of the exported product. What is required to be mentioned in the Shipping Bills is RITC Code Number which is not necessarily the same as CET classification. Therefore, there is no requirement of giving CET classification in the Shipping Bills. Accordingly, the classification of the product in the Excise invoices cannot be held as wrong merely on the basis of RITC Code number mentioned on the corresponding Shipping Bills. In respect of the rejection on the ground that in respect of one claim, the date of issue of ARE-1 is different and subsequent to the date of Central Invoice, I hold that when the corresponding shipping bills and mate receipts confirm the export of the goods, the same is condonable. Similarly, the Container No. and Seal No. not appearing on the Bill of Lading cannot be the ground for rejection of the claim when the other documents prove the export of the goods mentioned in ARE-1.

9. From the aforesaid observation of the Commissioner (Appeals), Government notes that Commissioner (Appeals) has already decided two issues at para 7(i) and & (ii) supra on merits in favour of the applicant. Being so, Government observes that it needs no further discussion on these aspects / points and hence the rejection of rebate claims on these grounds cannot be sustained as rightly held by the Commissioner (Appeals).



10. As regards the issue at para 7(iii) above, the Commissioner (Appeals) in his impugned Order has observed that

The other main ground on which the adjudicating authority has rejected the claims is that the appellants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The appellants are a merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors, M/s Agarwal Textile Mills who processed the goods were figuring in the Alert notices issued by the DGCEI and Central Excise authorities for fraudulent avilment of Cenvat Credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers. The credit had been availed by who may have availed the said Cenvat Credit fraudulently and the appellants may also be a party in the said fraudulent avilment of Cenvat credit. The bona fide nature of transaction between the merchant-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter.

In view of the Hon'ble Bombay High Court in Union of India v/s Rainbow Silks 2011(274) ELT 510 (Bom.) (discussed in impugned Order) and Revisionary Authority's Order in Re: Sheetal Exports-2011(271) ELT 461(GOI) (discussed in impugned Order), the impugned Order is upheld and the appeal is rejected.

11. From the aforesaid observation of the Commissioner (Appeals), as well as from the Order in Original No.2661/11-12/DC(Rebate), Raigad dated 31.03.2012 , Government observes that the rebate claims in respect of goods exported from processor M/s Agarwal Textile Mills were rejected on the grounds that the processor, M/s Agarwal Textile Mills were involved in availing Cenvat credit on the basis of bogus duty paying documents issued by the bogus grey suppliers and during the material time many Alert Circulars were issued by the DGCEI and Central Excise Authorities of Surat regarding passing of fraudulent Cenvat Credit on a large scale; and therefore, it was necessary to verify the authenticity of the Cenvat Credit availed by the processor, M/s Agarwal Textile Mills. The Adjudicating authority further observed that the applicant did not produce any record /documents



the genuineness of Cenvat Credit availed and subsequently utilized by the processors M/s Agarwal Textile Mills for payment of duty for above exports.

12. As against this the applicant in the present Revision Application has contended that

there are in all three rebate claims are involved in this Order in Appeal, Out of that in respect of two rebate claims- No. 13863 dated 19.09.2007 and No. 13864 dated 19.09.2007 were cleared for export from processor M/s. Agarwal Textile Mills. Department has called for Duty Payment Certificate from the jurisdictional Range Supdt., Range I, Division-II, Surat-1 directly by the Maritime Commissioner. This Certificate is issued in 2007 and the DGCEI investigation was carried out in 2004 and 2005. The Certificates are issued only after verifying the grey fabrics duty paid confirmation from the jurisdiction of grey fabrics manufacturers. In this certificate the Supdt. has clearly mentioned that the grey fabrics duty paid has been verified. The reference of this certificate is no were mentioned in the OIO and OIA. This is nothing but suppression of information for rejecting the genuine rebate claim.

The applicant in his Revision Application has also contended that

In respect of the third Rebate claim No. 16176 dated 22.10.2007 is cleared from the Applicant's own unit and the Applicants have submitted all the proof of duty payment on the grey fabrics credit availed. There is no findings against this rebate claim at all and also not sanctioned the rebate claim instead rejected along with other two claims without giving any findings for rejection under the presumption that this is also cleared from M/s. Agarwal Textiles Mills by the adjudicating authority as well as Commissioner (Appeals) inspite of the specific mention before the Commissioner (Appeals), the said claim was also rejected by the adjudicating authority and appellate authority. Actually this rebate claim should have been sanctioned by the adjudicating authority as there is neither rejection of rebate claim either in the OIO or OIA nor in the findings of both the Orders i.e. Order in Original and Order in Appeal.



13. Government observes that in many cases where DGCEI or Central Excise Authorities, Surat had issued Alert Circulars, there were some investigations caused and proper show cause notices were issued and adjudicated which helped in deciding whether the duty payment was genuine or not. However, in the instant case there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original passed in respect of Alert Notice issued.

14. Government in this case also observes from the Order in Original dated 31.03.2012 that opportunity was given to the applicant for submission of document/record regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-1, however, the claimant did not submit any records /documents proving the genuineness of the Cenvat credit availed & subsequently availed utilized by the processors for payment of duty on the above exports. Moreover, Government also observes that in respect of the third Rebate claim No. 16176 dated 22.10.2007 which was cleared from the applicant's own unit, the applicant has claimed to have submitted all the proof of duty payment on the grey fabrics credit availed but no specific findings are available in the Order in Original dated 31.03.2012.

15. Government therefore, is of considered opinion that the Order in Original No.2661/11-12/DC (Rebate), Raigad dated 31.03.2012 passed by the Deputy Commissioner, Central Excise (Rebate), Raigad Commissionerate lacks appreciation of evidence and hence is not a speaking order. Therefore, Government holds that a detailed verification by original authority into the allegations of alert Circulars is required to be carried out.

16. Government further observes that though the Commissioner (Appeals) in his findings has set aside the rejection of the rebate claims by the Original authority on account of payment of duty on the exported goods applicant when they were fully exempted under Notification No.307/2004-CB

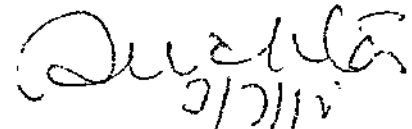


dated 9.7.2004 and also on account of Container No. and Seal No. not appearing on the Bill of Lading (as discussed at para 8 above), the same is not reflected in his final Order, as he has upheld the Order in Original No.2661/11-12/DC (Rebate), Raigad dated 31.03.2012 in toto and therefore, the Commissioner (Appeals) order is required to be set aside.

17. In view of above circumstances, Government sets aside impugned Order in Appeal and remands the case back to the original authority for denovo adjudication for a limited purpose of verification of Duty Payment in all these rebate claims and to pass a well-reasoned order after following the principles of natural justice. The applicant is also directed to submit all the documents relating to concerned ARE-1s along with original copies of BRCs for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of said documents from the applicant.

18. The Revision application is disposed off in above terms.

19. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 246 /2018-CX (WZ) /ASRA/Mumbai DATED 03-07-2018.

To,
M/s. Garg Tex-O-Fab Pvt. Ltd.,
Motilal Chunilal Compound, Swamy Narayan Industrial Estate,
Vasta Devdi Road,
Katargam, Surat -394 230.

ATTESTED


10/8/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner, GST & CX Mumbai Belapur
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

